



What Can Labor Organizations Do for US Workers When Unions Can't Do What Unions Used to Do?

Citation

Freeman, Richard B. 2013. What Can Labor Organizations Do for US Workers When Unions Can't Do What Unions Used to Do? In What Works for Workers: Public Policies and Innovative Strategies for Low-Wage Workers, ed. Stephanie Luce, Jennifer Luff, Joseph A. McCartin, and Ruth Milkman, 50-78. New York: Russell Sage Foundation.

Published Version

<https://www.russellsage.org/publications/what-works-workers>

Permanent link

<http://nrs.harvard.edu/urn-3:HUL.InstRepos:34257939>

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What Can Labor Organizations Do for US Workers When Unions Can't Do What Unions Used to Do?

Abstract

The traditional union model of organizing workers through representation elections and bargaining with management for higher wages and benefits is in trend decline in the US. Private sector union density has plummeted while public sector collective bargaining faces continual attacks on its legitimacy. In such a setting the only sensible answer to the title question is that unions will not accomplish much unless they find ways to impact economic outcomes outside of collective bargaining. With unions unable to do for workers what they once did, some labor activists, social entrepreneurs, and unions have pioneered strategies and tactics that engage workers and improve labor well-being without collective contracts. Modern information and communication technology offers ways to scale up some of these innovations and help restore a balance between labor and capital in the American economic system.

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What Works for Workers? Conference on Public Policies and Community-Based Solutions for Low-Wage Workers, Georgetown University, January 6, 2012 revision

Forthcoming as:

“What Can Labor Organizations Do for US Workers When They Can't Do What Unions Used to Do?” Chapter 2 in Stephanie Luce, Jennifer Luff, Joseph McCartin and Ruth Milkman (editors), What Works for Workers: Public Policies and Innovative Strategies for Low-Wage Workers (NY: Russell Sage Press, forthcoming 2014).

The starting point for any realistic assessment of what labor organizations can do for American workers is recognition that the traditional union model of organizing workers through representation elections and bargaining collectively with management has reached a dead end. With private sector union density in single digits and falling and public sector collective bargaining under attack, the only sensible answer to the title question is that unions will not accomplish much unless they find ways to impact economic outcomes outside of collective bargaining.

In some ways the situation of labor in the early 21st century resembles that in 1932 when George Barnett, then president of the American Economic Association declared that “I see no reason to believe that American trade unionism will ... become in the next decade a more potent social influence ... trade unionism is likely to be a declining influence in determining conditions of labor”.¹ Barnett's analysis was predicated on the continuous fall in union density in the 1920s and Great Depression levels of joblessness that seemed to strengthen employers' ability to defeat any organizing efforts. Today, a similar view would follow from the continuous fall in union density from the 1960s through the early 2010s and the weak job market in the Great Recession and sluggish jobs recovery.

While Barnett's prognostication was invalidated almost immediately after his address, as millions of workers turned to unions for economic protection in the Great Depression, there has been no such response by workers or unions in the Great Recession. Indeed, the Recession has if anything produced the opposite reaction, as it has emboldened conservative attacks on public sector bargaining and union security clauses and forced unions into a circle-the-wagon defense of existing practices. If defending the declining percentage of workers with collective bargaining was the entire story of labor in the 2000s, this paper would end with a short RIP epitaph. But in the 2000s, declining density and Great Recession notwithstanding, labor activists, social entrepreneurs, and some unionists have developed new ways to mobilize workers and the public to press for improvements in labor conditions outside of collective bargaining. If unions or other labor organizations find ways to bring the successful innovations to scale, the answer to the title question would be “quite a bit” rather than “not much”.

This paper explores what unions and related labor organizations have begun to do for workers outside of collective bargaining. I begin by reviewing the failure of the firm-based collective bargaining model that poses the problem for labor; then examine some promising non-collective bargaining initiatives; and conclude by considering how these initiatives might expand to make labor a more potent influence on economic outcomes than it is today.

The Contraction of Collective Bargaining

Union density declined in many advanced countries from the 1990s to the 2010s, but loss of density weakens the ability of unions to represent labor in society more in the US than in most other countries. The reason is that many EU countries mandate the extension of collective agreements from signatory unions and employer federations or firms to entire sectors or regions. Mandatory extension maintains collective bargaining as the mode of setting pay and conditions of work despite falling union

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density. But in the US, from enactment of the National Labor Relations Act (NLRA) to the present, private sector unionism and collective bargaining have been coterminous. US unions view themselves primarily as bargaining agents for workers in firms that recognize unions and as having little or no relation to other workers. When a worker leaves a unionized workplace, most workers make little or no effort to continue to provide services to the worker. Making collective bargaining the core activity of unions worked well when unions bargained for a substantial share of the work force. But from the 1960s to the present the collective bargaining model has run aground on: inability to organize private sector workers in the face of management opposition; economic conditions that reduce union bargaining power with employers; political conditions that stymie union efforts to change the NLRA to be -friendly changes in the Act; and conservative efforts to weaken unions in the public sector where unions have maintained a substantial presence.

Density is fundamental to union strength. In 2011 private sector density was 6.9% -- the lowest it has been since 1900 when total density, then based almost entirely on private sector workers, was 6.8% (Freeman, 1998, p 291). In the 2000s unions initiated National Labor Relations Board (NLRB) representation elections for so few workers that had unions won all the elections, the impact on density would have been barely noticeable.² Organizing outside the NLRB was also too limited to counterbalance the natural drop in density when union plants close or shrink and new establishments enter non-union. Indicative of the decline of unionism Godard and Frege (2010) estimated that in 2009 more workers viewed company appointed non-union committees as representing them with employers (presumably illegal under section 8a2 of the NLRA than reported elected unions representing them.

Within the organized sector, economic conditions forced many unions into *concession bargaining*. Consider the relation between the United Automobile Workers (UAW) and the Big Three auto firms. Between 2003 and 2008, plant closings and buyout and early-retirement programs reduced UAW membership at General Motors, Ford and Chrysler from 350,000 to 139,000 workers.³ When GM and Chrysler came close to collapse in the Great Recession, federal bailout aid kept them alive and helped Ford survive as well. The UAW took responsibility for retiree health care, accepted lower pay entry jobs and profit-sharing arrangements in place of fixed pay, and acceded to other cost-saving give-backs⁴. The auto firms survived, and in the ensuing recovery workers gained substantial bonuses⁵. But from 2008 to 2011 employment in motor vehicles and motor vehicle manufacturing⁶ dropped 24.2% and even with the rescue package and recovery, employment in mid-2012 was still 15.9% below its mid-1998 level.

Work stoppages, historically labor's weapon to raise pay or benefits by going out on strike and closing an employer's production have increasingly become the employer's weapon to pressure unions to accept wage or benefit cuts through lockouts⁷. Newspaper headlines report more lockouts in the

² The situation facing unions is so dire that I expect that NLRB policy changes such as the 2012 decision to speed up representation elections (Greenhouse, 2011b) will have no noticeable effect on union density.

³ See New York Times topics on the United Automobile Workers, http://topics.nytimes.com/top/reference/timestopics/organizations/u/united_automobile_workers/index.html

⁴ Vlasik (2008)

⁵ When GM earned its highest profits in history in 2011, GM's 47,000 blue collar UAW workers received about \$7,000 in bonuses. Chrysler paid about \$1,500 in bonuses to its 23,000 hourly workers. Ford paid \$3,252 to its 40,600 UAW workers based on half a year's profits, which puts it in line for a \$6,000-7,000 annual payment. See Alisa Priddle (2012) for a discussion of Ford sharing wealth, and see UAW Vice President Joe Ashton's statement on GM's 2011 profit sharing at <http://uaw.org/articles/statement-uaw-vice-president-joe-ashton-gm-2011-profit-sharing>

⁶ Motor vehicles and motor vehicles manufacturing data are for Census code industry 3570, which covers many more firms than the Big Three.

⁷ Steven Greenhouse (2012) and John Wojcik (2012).

early 2010s than ever before. In August 2011 American Chrystal Sugar locked out its Minnesota employees, whom it replaced with temporary workers.⁸ In January 2011 the financially troubled New York City Opera locked out its orchestra and singers and won deep cuts in labor compensation⁹. In 2011 the NFL and NBA locked out players to force them to accept lower shares of industry receipts. In 2012 the NFL locked out referees and the NHL locked out its players. Data from the Bureau of National Affairs show that about 9% of work stoppages from 2010 to late 2012 resulted from lockouts, double the 4.6% of work stoppages that were lockouts in the 1990s and 2000s.¹⁰ Lockouts tend to be longer than strikes and increased in length as some firms used long lockouts to destroy their existing unions.¹¹ The greater length of lockouts means that the share of persons on a work stoppage due to lockouts at any point in time increased more than the lockout share of stoppages.

To arrest the decline in density unions have tried to convince Congress to enact pro-union labor law reforms whenever the Democrats control the federal government. Their efforts came up short in the 1970s under President Carter, in the 1990s under President Clinton, and in the 2000s under President Obama. Efforts to invigorate union organizing by elevating former organizing directors to leadership roles in unions and the 2005 withdrawal of several major unions from the AFL-CIO to form the Change to Win coalition also failed to arrest the drop in density.

The public sector was the only place where unions held their own. Public sector union density stabilized at around 37% in the 2000s¹² With private sector density falling and public sector density rising public sector union membership surpassed private sector membership in 2010. When recession-induced budget crises hit cities and states nationwide, however, opponents of unions launched a massive attack on public sector bargaining as a contributing factor to rising public sector deficits (Freeman and Han, 2012).¹³ The American Legislative Exchange Council (<http://www.alec.org/>), an association of conservative legislators, corporations, and foundations, promulgated bills to restrict public sector bargaining and to limit dues checkoffs/agency fees and union political activities. The battle in Wisconsin over Republican Governor Walker's 2011 budget bill that ended public sector collective bargaining except for police and fire induced a massive union response.¹⁴ State petitions forced Governor Walker into a recall election but the pro-collective bargaining forces were unable to unseat him in the election. Unions and their allies were more successful in overturning a bill to end collective bargaining for all public sector employees in a statewide referendum. But in December 2011, a lame-duck Republican legislature in Michigan enacted a right-to-work law that outlawed agency shops for workers with the exception of police and firefighters.¹⁵ In these states and others unions spent considerable resources defending the status quo against well-financed opponents who seemed orc-like in their efforts to accelerate the on-going decline in collective bargaining.

⁸ This dispute was 16 months long without resolution as of December 2012. See Mike Hughlett (2012).

⁹ Daniel J. Wakin (2012)

¹⁰ Robert Combs (2012a)

¹¹ Robert Combs (2012b)

¹² See www.unionstats.com, Union Membership, Coverage, Density, and Employment Among Public Sector Workers, 1973-2011. This is over twice the 15% of the work force in the public sector.

¹³ In March 2009, John Kasich of Ohio, elected Governor in 2010, talked about the need to "break the back of organized labor in the schools" (Plunderbund, 2010). Many conservatives had long believed that it was illegitimate for government to bargain with unions in a democracy on the grounds that voters rather than bargaining should set the terms of work (McHugh, 2011).

¹⁴ See Christian Schneider (2011). Earlier, Republican governors in Indiana, Kentucky, and Missouri had revoked executive orders that allowed state employees to bargain (Malin, 2009). To make sure future governors did not restore the right to bargain, the Indiana legislature required legislative approval of any future executive decision.

¹⁵ Fletcher and Sullivan (2011)

What explains the continued decline of unions in the Great Recession/recovery compared to the spurt in unionism in the Great Depression?

Opinion polls suggest that the two economic disasters altered public attitudes toward unions differently. When unions had their Great Depression growth spurt between 1934 and 1939¹⁶ the vast majority of Americans appear to have strongly favored unions. The Gallup Poll data in Figure 1 shows that in 1936 (the first time Gallup asked about attitudes toward unions) 72% approved of unions compared to 20% who disapproved.¹⁷ The Depression had destroyed faith in the established economic order and convinced workers to seek new ways to structure their work lives and the economy. Attitudes toward unions in the Great Recession went the other way. The percentage approving unions fell from 60% in 2007 to 48% in 2009 and remained low at 52% through 2012. This fits with a general pattern in recent years which public approval of unions rises when unemployment is low and falls when unemployment is high.¹⁸

Figure 2 shows a concomitant change in the responses of citizens to whether they want unions to have less, more, or the same influence on society. Between 2007 and 2009 the proportion who wanted unions to have less influence increased from 28% to 42%, after which it changed little through 2012. One possible explanation for the reduced support for unions in the Great Recession is the concentration of unionism among government employees, who obtained wages and benefits from taxes paid by private sector workers who themselves had little chance of unionizing and gaining higher wages and benefits from their employers. Many respondents may also have viewed the bailout of the auto firms as reflecting the power of the politically influential UAW.¹⁹ The majority of respondents believe that unions benefit members., and until the Great Recession, a small majority also believed that unions benefited non-members. But between 2006 and 2009, the proportion who believed that unions mostly harmed non-members jumped from 36% to 51%.²⁰

But the most telling aspect of the increased negative attitudes toward unions is its partisan nature. Figure 3 shows that between 1999 and 2011 Republican approval of unions fell from 51% to 26%); independents' approval of unions fell by a smaller amount; while Democrats maintained a high approval of unions. As a result the 26 point Democratic-Republican gap in approval in 1999 doubled to 52 points in 2011. The 2011 negative Republican attitude toward unionism is a far cry from the Republican attitude in the 1950s when President Eisenhower thanked unions for their "unique contribution to the general welfare of the Republic—the development of the American philosophy of labor,"²¹

Figure 4 shows another factor that may help explain union weakness in the current period: the widespread belief that unions will become weaker in the future. As Gallup did not ask the "will labor unions become stronger or weaker?" question in the 1930s, we can only speculate whether in that period most Americans agreed with Barnett's view of unions as inevitably declining or saw them as potentially harnessing discontent over the Depression. Given increased strikes in 1933 and 1934, the development of industrial unionism in the mid-1930s, the formation of the Congress of Industrial Organizations and its split from the AFL-CIO, it is reasonable to expect that a much larger proportion of Americans thought unions were the future rather than the past than thought so in the 2010s.

¹⁶ Freeman, 1998, table 8.1, p 268.

¹⁷ Adam Berinsky et al. (2011) have developed weights to turn the quota-sampling procedures used in the early public opinion surveys into population-weighted estimates. These show huge approval for unions from the 1930s through 1942.

¹⁸ Nate Silver (2009), data from 1948 to 2008; Madland and Walter (2010, 7).

¹⁹ Madland and Walter, 2010, and Meyerson 2012

²⁰ <http://www.gallup.com/poll/12751/labor-unions.aspx> reports all of the gallup poll results

²¹ Eisenhower 1955.

To be sure, unions are not the only institution on which Americans have soured in the past two-three decades. Since the Great Recession a sizable proportion of Americans believe that the country is headed in the wrong direction.²² Taking a longer perspective, Madland and Walter (2010) report a drop in “favorable attitudes” toward business from 1985 to 2010 that exceeds the decline in favorable attitudes toward labor and a drop in “confidence” in business from 1973 to 2009 that exceeds the drop of confidence in labor. In 2011 the public rated lobbyists, major corporations, and financial institutions at the top of the list of institution with “too much power” and placed unions in the middle of the pack on par with state government and the legal system. The average responses, however, masque the partisan divide noted earlier on the approval of unions. The proportion of Republicans who view unions as having too much power places unions near the top of their list, just below the arch-villain federal government. By contrast, the proportion of Democrats who view unions as having too much power places unions at the bottom of their list.²³ Where unions differ from other institutions on the list is that only unions face a continuous attack on their legitimacy to operate in the US economy and near extinction unless they find new ways to operate.

Labor Organizations without CB

With collective bargaining contracting, activists inside and outside of unions have sought new ways to represent worker interests and maintain organized labor as the voice of workers in US capitalism. In 2000 Joni Hersch, Larry Mishel and I organized a National Bureau of Economic Research conference on “Emerging labor market institutions for the Twenty-First Century”²⁴ to examine how various non-collective bargaining institutions were faring at the new millennium. Researchers examined a wide range of organizations: anti-sweatshop human rights activists; living wage campaigners; law groups devoted to enforcing labor and employment law; Working Today, which provided portable benefits to freelance workers; various occupational associations; and union-management and community-based intermediaries that provided training to workers outside their firm. The conference found that none of the organizations had developed sufficient depth or breadth to substitute for unions but noted that “this volume is just the first chapter in what may be a long story of innovations by nonmember organizations, by professional and other nonunion organizations, and by unions to find the best way to represent the interests of labor in an economic environment where traditional unionism is greatly weakened.”²⁵

This section sketches out the second chapter in the story. It gives a more positive reading of the ability of new organizational forms to mobilize workers and improve labor conditions than the 2000 Conference. By 2012 more non-collective bargaining institutions were operating and impacting on society in novel ways than a decade earlier. The spread of low-cost Internet-based information and communication tools made it easier for these groups to mobilize citizens, organize demonstrations and campaigns, and identify and appeal to workers than in earlier years.

Table 1 lists eleven non-CB labor institutions that formed or developed their current structure

²² The proportion who see the country going in the wrong direction varies with economic and political developments, but it has been high since the implosion of finance and ensuing recession. See http://www.realclearpolitics.com/epolls/other/direction_of_country-902.html, accessed February 18, 2012 based on 707 polls (updated December 5, 2012).

²³ The difference in the proportion of Republicans and Democrats who viewed unions as having too much power was a huge 49 points. This contrasts to modest partisan differences for other entities save for the federal government (41 point difference), see Gallup Poll (Saad 2011).

²⁴ The conference was held August 4-5, 2000, and the book published in 2004.

²⁵ Freeman and Hersch (2004,11).

between the late 1990s and 2000s. I categorize them into three groups: 1) Groups that target broad economic issues and society but do not deal with specific firms, occupations, or industries. Those groups were missing completely from the emerging institutions conference as they had not yet developed; 2) Groups that seek to help workers in particular occupations or industries deal with labor market problems and that represent them in pressing governments for improved or better enforced regulations in the occupation or industry; 3) Groups that seek to pressure particular firms for better wages and benefits without expecting to unionize a majority of the firm's workers for collective bargaining. These groups can pressure employers as minority union in a firm or as a non-union association of workers supported by unions, or in the case of public sector unions in states that outlaw public sector collective bargaining as unions that seek to improve conditions for members absent negotiating legally binding agreements with employers. I sketch out below what each of the groups does to mobilize and aid workers.

Society-economy Oriented Institutions

Occupy Wall Street – bringing attention to big problems. In September 2011, Occupy Wall Street (<http://occupywallst.org/>) protesters sat down in Zuccotti Park near Wall Street to demonstrate against economic inequality²⁶. The disparate group of largely college graduates camped out under banners that read “we are the 99%” did more to bring the problem of inequality to US policy discourse than academics or unions had done in the preceding two to three decades.²⁷ Occupy spawned protests in the US and worldwide.²⁸ The US occupy groups ranged from Wall Street savvy experts who write technical critiques of financial regulations (www.occupythecsec.org) to city-based groups focused on local issues (www.occupyoakland.org) to university-based groups which target campus issues – Goldman-Sachs recruiting at Harvard for instance (www.occupyboston.org).²⁹ With its non-partisan orientation and stress on identifying problems rather than offering solutions, the occupy movement has shown that modern information and communication technology and social media allows a small group without much money or organization to come together and create a local and global ruckus about important social issues.³⁰ But Occupy's lack of organization and connection to political or business institutions limits its effectiveness in producing social change to resolve the problems it has brought to US and world attention.

Petition sites: change.org. On-line petition sites provide a platform for citizens to start and sign petitions to pressure governments or other organizations to change policies. [Www.change.org](http://www.change.org), a for-profit certified B Corporation³¹ is currently the world's leading petition site. In the 2010s it has expanded from its US base to many other countries.³² The site enables a citizen to express his or her

²⁶ “OWSs main issues are social and economic inequality, greed, corruption and the perceived undue influence of corporations on government.” (Dilek 2013).

²⁷ In September 1981 unions organized a mass Solidarity march on Washington to protest the emerging recession spurred by economic policies of the Federal Reserve and Reagan Administration's effort to curb inflation.

²⁸ See Rogers (2011) for a link to the google spreadsheet showing 747 activities in Fall 2011 under the Occupy banner.

²⁹ For an analysis of the Occupy movement at Harvard University, see Cook and Rouse (2012); for a more critical view see Troia (2012).

³⁰ See <http://occupywallst.org/about/> and Take the Square (2011).

³¹ In 2010 US states beginning with Maryland instituted a charter for a benefit or B-corporation, that commits itself to do more than seek profit-maximization for shareholders.

³² The same technology has spawned many other sites, such as www.labourstart.org, a pioneer in gathering and publishing labor news from around the world that regularly asks users to sign petitions when union leaders or members are arrested or endangered. Facebook has pages that organize petitions as well.

voice on an issue easily. You go to the web site and click the “start a petition” button. The script asks a set of questions: Who do you want to petition? What do you want them to do? Why is this important? Then you write your petition and submit it. The site alerts people who might be interested in your cause and they may alert their friends and ... pow! The petition may go viral. www.change.org makes money by selling its email database to charitable and other organizations who want to connect with people having particular interests.

In the fall of 2011, two petitions begun by Molly Katchpole, a 22 year old college graduate working as a nanny, demonstrated the power of Internet petitioning. In October the Bank of America added monthly fees to low income customers for using their debit cards.³³ Customer Katchpole placed a petition on www.change.org asking BOFA to rescind the policy.³⁴ It read:³⁵

Brian T. Moynihan, President and CEO, Bank of America

I'm writing to express my deep concern over Bank of America's decision to charge customers \$5 a month to use their debit cards when making purchases.

The American people bailed out Bank of America during a financial crisis the banks helped create. You paid zero dollars in federal income tax last year. And now your bank is profiting, raking in \$2 billion in profits last quarter alone. How can you justify squeezing another \$60 a year from your debit card customers? This is despicable.

American consumers can't afford these additional fees. We reject any claims by BofA that this latest fee is somehow necessary.

Please, do the right thing. Reverse your decision to charge customers \$5 each month for using their debit cards to make purchases.

Sincerely,

Three hundred thousand people, signed the petition, including President Barack Obama. US Senator Durbin of Illinois responded to the petition on Twitter. Congress decided to "look at legislation for out-of-control banking fees."³⁶ Most important, the media gave the petition national exposure, and people responded. Some customers left the Bank of America. Others threatened to leave. Faced with furious customers, the Bank of America dropped its banking fee.

Two months later Verizon announced that customers paying telephone bills on-line had to pay a \$2 fee. Customer Katchpole wrote a petition protesting the Verizon fee. Within hours her petition gathered over 130,000 signatures. The Federal Communications Commission, which regulates telecommunications, announced that it would investigate. But there was no need for regulators. As Katchpole's petition gained signatures, Verizon withdrew the fee.³⁷

Typical change.org petitions do not attract hundreds of thousands of signatures, but much smaller numbers may be enough to change the decisions of smaller organizations. In 2012, Rachel Voorhies at Dosha Salon Spa in Oregon petitioned her employer about worker's desire to unionize. This petition had 595 signatories as of Feb 22, 2012³⁸, but the number of signatories kept growing in the spring and summer. In fall 2012 change.org carried the following announcement: “After over 17,000 signed Rachel Voorhies' petition ... the owners have agreed to sit down with Rachel and her co-workers. In June 2012, Dosha and representatives of the union representing Rachel and her co-workers

³³ The Federal Reserve had capped the amount banks can charge merchants for processing debit-card purchases, so BOFA and other large Banks decided to make up the money by charging low income consumers.

³⁴ Colgrass (2011).

³⁵ http://www.change.org/petitions/tell-bank-of-america-no-5-debit-card-fees?utm_source=share_petition&utm_medium=url_share&utm_campaign=url_share_before_sign

³⁶ Wikipedia Contributors 2013a

³⁷ Frellick (2012).

³⁸ <http://www.change.org/topics/economicjustice>

will begin mediation to settle their disputes and agree on ways to address workers' concerns like wages, health and safety, vacation time and benefits.”³⁹

The occupy demonstrations and petition drives come from grass roots individual behavior. Relying extensively on Internet and social media communication they create new markets for people to come together and press society on issues that matter to them. Creating a new market for grass roots individuals to express themselves has an intrinsic appeal to market-oriented economists regardless of their views of the specifics of the issue. Demonstrations and petitions succeed if the issues they target meet the market test of getting enough individuals involved to force decision-makers to rethink decisions.

Working America (www.workingamerica.org/) (WA) is a different organization, which the AFL-CIO created as a non-collective bargaining “community affiliate” to connect the federation to nonunion workers, in large part to extend union political influence beyond its declining membership.⁴⁰ WA canvasses people in their homes to join. In 2007 it recruited about 2 million members in states viewed as politically important such as Ohio, Pennsylvania, Virginia and obtained 135,000 members on-line, giving WA members throughout the country. In 2012 WA reported having about 3 million members. While the organization offers members involvement in a social movement focused on “the priorities that matter most to working people . . . (and that can) . . . make a difference for your community, for America and for your working family,” its primary goal is to get members to be politically active and vote for union-endorsed candidates. Until the Supreme Court's *Citizens United* decision in 2010, unions could not use their resources to proselytize non-members in political campaigns.⁴¹ They needed an organization like WA to be able to target non-member voters. By allowing all organizations to use their funds for political purposes, *Citizens United* has eliminated this rationale for unions funding WA.

With local offices in many areas and large membership, Working America has the potential to be much more than a top-down Washington-run AFL-CIO affiliate seeking to influence the votes of citizens outside the union movement. WA could decentralize its structure, develop procedures for members to elect leaders in local chapters and encourage chapters to experiment with their own ways of engaging the public and targeting workplace issues. Harold Meyerson reports that Working America “began some small-scale efforts in 2012 to have its members raise issues in their workplaces”⁴² but the organization has a long way to go to become a free-wheeling member-driven emerging labor institution.

Occupation/Industry/Community Based Groups

Worker centers are community-based organizations that support low-wage workers, mostly from immigrant communities, in a variety of ways outside of collective bargaining.⁴³ The centers give legal assistance to workers facing wage arrears (delayed or unpaid wages); advocate and lobby for legislation to improve work conditions and for authorities to implement existing laws; and seek to educate workers and their communities about ways to campaign on workers' behalf. The number of worker centers increased rapidly from a handful in the 1990s to on the order of 150-200 by the mid to

³⁹ See <http://www.change.org/petitions/dosha-salon-spa-respect-salon-workers>

⁴⁰ For a detailed description see Freeman and Rehavi (2009).

⁴¹ Wikipedia Contributors (2013b).

⁴² Harold Meyerson (2012)

⁴³ For the most detailed analysis, see Janice Fine (2006).

late 2000s.⁴⁴ They coalesced into two major national networks, the National Day Laborer Organizing Network (NDLON) that had 43 member organizations in 2012, and the Interfaith Worker Justice (IWJ), which listed 26 worker centers that reached 17,000 workers in 2012.⁴⁵ Impressed by what worker centers have done, in 2006 the AFL-CIO entered partnership with NDLON to “work together for state and local enforcement of rights as well as the development of new protections in areas including wage and hour laws, health and safety regulations, immigrants’ rights and employee misclassification (and)... for comprehensive immigration reform that supports workplace rights ... and against punitive, anti-immigrant, anti-worker legislation.”⁴⁶ and also formed a partnership with the IWJ. In 2011, it entered similar agreements with the National Domestic Workers Alliance and the National Alliance of Guestworkers.

The worker centers have grown sufficiently rapidly to generate legal debate over whether they are or not labor organization subject to NLRB laws, which limits their ability to engage in secondary boycotts and necessitates reporting requirements. In the first analysis of this issue, Rosenfeld (2006) argued that the definition of a labor organization was sufficiently broad that “As they grow in number and scope, worker centers will have their development and effectiveness arrested by the very problem they were designed to avoid: the regulation of and restrictions on labor organizations under the National Labor Relations Act (NLRA).” Naduris-Weissman made the case that so long as the centers work at the settling individual employment claims, they will be exempt from the law but that if they seek to resolve workplace disputes in sustained back-and-forth dealings with the employer, the NLRB/courts could view them as being governed by NLRA labor.⁴⁷ Marculewicz and Thomas (2012) claim that the workers centers are worker organizations by another name and thus subject to NLRA regulations. What is striking is the general agreement that coverage by the NLRB will weaken the ability of the centers to assist workers outside of collective bargaining.⁴⁸

The *National Domestic Workers Alliance* (NDWA) (<http://www.domesticworkers.org/>) is an NGO that seeks to bring domestic work and the labor conditions of domestic workers to national attention and to establish labor standards for them. It is based on 35 local, membership-based affiliate organizations of over 10,000 nannies, housekeepers and caregivers for the elderly located in 19 cities and 11 states around the country. Many of its member organizations are community and worker centers but its mode of operation places it further outside the NLRB labor organizational form than worker centers. The NDWA provides information on the conditions of domestic workers and advocates for legislation to bring domestic workers under labor law. In 2012 it published *Home Economics: The Invisible and Unregulated World of Domestic Work* (Burnham and Theodore, 2012) based on a survey of some two thousand nannies, caregivers, and house cleaners in 14 metropolitan areas that attained media attention. It has 42 videos on its YouTube channel telling the story of domestic workers. In 2012 it launched a national campaign focused on the working conditions of people providing direct care to the elderly and people with disabilities.

On the legislative front NDWA's main success was in New York, where it got the state to adopt a Domestic Worker's Bill of Rights to ensure basic labor protections for domestic workers. It pushed a similar bill through the California legislature that was vetoed by Governor Brown. It has pressed

⁴⁴ Marculewicz and Thomas (2012)

⁴⁵ Enriquez (2011)

⁴⁶ AFL-CIO 2006)

⁴⁷ Naduris-Weissman (2009).

⁴⁸ Marculewicz and Thomas (2012, 1) note that the head of the Restaurant Opportunities Center was opposed to NLRB coverage because this would require having to spend time and money arbitrating worker grievances under the duty of fair representation to workers and restrict secondary picketing and protracted recognitional picketing.

Congress to end exclusions of domestic workers from the nation's labor laws and to extend to them coverage under minimum wage and hours legislation.

In 2011 the AFL-CIO endorsed the NDWA and sent a joint Open Letter with the group to trade unions and national centers around the world about the union movement working with the Alliance.⁴⁹ Time Magazine viewed the Alliance as sufficiently promising to name the group's founder, Ai-Jen Poo, one of the 100 most influential people in the world in 2012 – the only person on the list whose occupation was labor activist.⁵⁰

The New York Taxi Workers Alliance (NYTWA) (<http://www.nytw.org/>) represents the interests of taxi-drivers in the city much as a traditional trade union would do except that it does not bargain collectively with any employer. Founded in 1998, it reports having more than 15,000 members, who in principle pay \$100 a year in dues. Its web page lists its successes as: gaining the first-ever Living Wage standard for US taxi drivers; negotiating inclusion of taxi drivers for 9/11 federal disaster assistance, which garnered over \$15 million in aid for drivers; organizing two major short strikes of licensed taxi drivers, one in May 1998 and another in September 2007; recovering lost income due to unlawful license suspensions; defending drivers in civil court claims by corrupt taxi brokers; changing numerous anti-worker policies and regulations governing the taxi industry; and raising drivers incomes by 35%-45%. The Alliance provides discounted or pro bono legal advice, financial management, and health services to the drivers who join the union. In September 2011, the AFL-CIO gave a national charter to the Alliance, which made it the first nontraditional workers' organization to become formally chartered in more than six decades. AFL-CIO head Richard Trumke gave a YouTube video "thank you" to Bhairavi Desai, founder of the NYC Taxi-drivers alliance;⁵¹ and President Obama recognized Desai and the union for their success at a meeting in DC hosted by the Administration's Office of Faith-based and Neighborhood.⁵² The organization has inspired and assisted the development of similar taxi-driver worker alliances in 20 areas of the US and in several foreign countries.

The Freelancers Union (Freelancersunion.org) is a federation of independent workers that advocates for freelancers in the US and that operates a B-corporation Freelancers Insurance company to provide insurance benefits for independent workers in New York State who work in an eligible industry, and meet certain work requirements. By obtaining insurance for large numbers of workers, it is able to charge group health insurance rates and save members considerable money. Initially, the freelancersunion purchased group insurance for its members from commercial insurance companies but since 2008 it has done so through its wholly owned for-profit subsidiary. The organization grew from about 35,000 members in the 1990s to close to 200,000 members as of January 2013. With \$340 million in federal funding it expanded its health plans in New York, New Jersey, and Oregon in 2014. With support from NY it launched a freelancer medical center in Brooklyn in 2013. The freelancersunion does no collective bargaining over wages or working conditions but provides members with information about how to deal with wage arrears, which is a problem for independent workers in almost every field of specialization (Rodgers 2010). It also provides members with online tools, business management information, networking opportunities, group discount terms with various vendors or partners, and other assistance in working successfully as independents. It sponsored

⁴⁹ AFL-CIO, NDWA (2011).

⁵⁰ See Gloria Steinem (2012)

⁵¹ http://www.youtube.com/watch?v=op7IauPe_WI

⁵² http://www.youtube.com/watch?feature=player_embedded&v=O7paNg2PP3M#!

legislation in New York to grant freelancers the same wage protection as traditional employees, to require the Department of Labor to pursue freelancers' unpaid wages, and to hold deadbeat executives liable for up to \$20,000 and jail time (The Freelancer Payment Protection Act (S4129/A6698)). It receives with considerable grant support from foundations, NYC and New York State. In 2011 Forbes and Businessweek named its founder, Sara Horowitz to their separate lists of Top Social Entrepreneurs.

Employer-based groups

Alliance@IBM (<http://www.endicottalliance.org/>) and *WashTech/CWA* (Washtech.org) are chartered locals of the Communication Workers of America (CWA), which were initially formed as independent groups by IT workers at IBM and Microsoft and later affiliated with the CWA, which represents workers in telecommunications and other fields.

Information technology workers at IBM formed the *Alliance* in 1999 to protest the firm's unilateral change in the company pension system which greatly harmed some future retirees. The group's initial protest succeeded in getting IBM to alter some parts of its planned changes in the pension system. When at the end of 2012, IBM management changed the timing of the firm's match contribution to workers' 401(k) pension plans in ways that threatened to reduce the value of the plan to some employees, the Alliance@IBM use the change.org petition site organize a petition "to Tell IBM to REVERSE their Decision!" As of January 7, 2013 943 persons, presumably all IT specialists at IBM had signed the petition. Recognizing that IBM management and the media would only listen if IBM employees had an organization of thousands, Alliance initiated a membership drive for associate members, promising employees that their names would be confidential.

Microsoft contract employees in Redmond, Washington, formed WashTech in 1998 to organize protests against the firm's overtime pay for contract employees. Because employment agencies rather than Microsoft hire the contract workers and workers shift employers frequently, WashTech found it infeasible to represent the workers of Microsoft only (Bishop, 2009) and widened its scope to high-tech industry workers in the Northwest more broadly. Washtech signed a collective bargaining contract with a company in 2003 and negotiated and signed three more since with small employers. The organization tells workers, "Join WashTech today for as little as \$11/month and enjoy Union Plus benefits." and informs them "You do not have to live in Washington State to join."

The CWA chartered both organizations as local unions even though neither has any possibility of gaining majority support from the IT giants whose employees they advocate. But with minimal dues and modest membership the Alliance@IBM and WashTech/CWA have remained alive and active for over a decade. The ability to communicate with workers at low-cost over the Internet has been critical in the survival of these organizations. Diamond and Freeman note that "Even if workers at IBM, Microsoft and most other high tech firms never win an NLRB election, these sites make the union a part of the company in a way that was impossible prior to the Internet."⁵³

OUR Walmart (<http://forrespect.org/>) "The best thing the UFCW can be is a catalyst to help associates build an organization".⁵⁴ In the early 2010s the United Food and Commercial Workers undertook a novel campaign to help the employees/associates at Walmart develop an explicitly non-union organization from the ground up designed to improve wages and working conditions without collective bargaining. The plan for OUR Walmart was based on research by ASGK public strategy group, which used Facebook to identify Walmart employees and which tested messages that would

⁵³ Diamond and Freeman (2002, p 581)

⁵⁴ Dan Schlademan, UFCW official, quoted in Steven Greenhouse (2011)

appeal to them. The organization developed a 12 point declaration that asked Walmart to improve conditions in various ways and to “provide wages and benefits that ensure that no Associate has to rely on government assistance” and to share profits and treat Associates as partners.⁵⁵

OUR Walmart burst to national attention in fall 2012, when members struck for a day at a California warehouse. The organization then promised a one-day protest/strike on the post-Thanksgiving Black Friday sales day. Though the number of workers who went on strike on Black Friday was miniscule compared to Walmart's 1.4 million US employees,⁵⁶ the strike received national attention. Walmart and some analysts derided the strike as a failure as it did not interfere with the operation of stores nor harm company sales. But OUR Walmart and other analysts viewed the strike as a success. The strike gained the attention of Walmart management, which sought but failed to get an injunction against the strike from the NLRB and felt it necessary to hold anti-union meetings in many stores and to offer workers an extra discount on their Walmart purchases on that day. Some workers joined the organization or went out on strike in response to management pressures.⁵⁷

In 2012 OUR Walmart reported that it had about 4000 members, who pay dues of \$5 per month, and reported 2,229 signatures to its declaration. If OUR Walmart keeps raising issues and protesting conditions and growing its membership, it has proven that it can force management to respond. Over time, it will induce greater attention to human resource policies and possibly lead the firm to raise wages and benefits to choke off further growth of the organization. Whether OUR Walmart can go beyond that and become an organization that the firm feels compelled to “meet and confer” over employee issues depends not only on its galvanizing workers but also gaining support from the store's customers.

public sector unions in states that ban public sector collective bargaining. Five states – Georgia, and North Carolina, South Carolina, Texas, and Virginia, – ban collective bargaining by state and local public employees; and several other states, such as Mississippi and Arizona make bargaining difficult so that most public sector employees who form unions are unable to obtain contracts. Despite that, a substantial number of state and local workers join unions in those states and in other states where public sector unions do not gain collective bargaining agreements. In three of the five states that ban teachers bargaining -- Texas, Virginia, and Georgia -- a majority of teachers are union members. And the unions in these settings generally obtain better outcomes for their members in the form of pay, benefits, or working conditions. How? The non-collective bargaining unions sign meet and confer agreements with local governments, lobby legislatures on laws regarding employment and budgets and campaign for candidates favorable to their members, much as do some of the private sector non-collective bargaining groups. Their effects appear to be larger the higher their level of density (Freeman and Han, 2012).

In short, in the public sector and in the private, the absence of collective bargaining need not mean the end of unionism nor of the ability of workers to affect the conditions of labor.

Conclusion

Since the turn of the 21st century a wide range of groups – from free-wheeling occupiers to petition sites to worker centers, to diverse types of non-collective bargaining groups such as the

⁵⁵ The declaration is available at http://forrespect.nationbuilder.com/sign_the_declaration

⁵⁶ Walmart reports 2.2 million employees worldwide and 1.4 million in the US “alone”. See <http://corporate.walmart.com/our-story/locations>, accessed January 7, 2013.

⁵⁷ Joel Griffith (2012) gives the case for the protests as failure, while Josh Eidelson (2012a,b,c), who live-blogged the Black Friday strike, gives the case for its success.

freelancers, the taxi-drivers, the union-initiated OUR Walmart nonunion worker organization – have experimented with innovative non collective bargaining modes of representing workers interests inside and outside companies. Some of these organizations fit with the “Open Source Union” model (Freeman and Rogers, 2002, 2006) that Joel Rogers and I proposed over a decade ago to engage workers outside of collective bargaining by using modern information communication technology. Some of the new non-collective bargaining organizations have gone beyond what we envisaged, as the expansion of the Internet and development of social media has widened the possible ways for groups to press for changes. Traditional unions have begun to move in the same direction, either to support innovative non-union groups or to learn from them how best to navigate an economic environment where collective bargaining is in abeyance. Compared to the status of emerging labor institutions for the 21st century in 2012 with the review of their situation in the 2000 NBER conference, the “second chapter” in the story of labor organizations and activists seeking to help workers in non-traditional ways holds considerable promise.

Unions and related labor organizations gain members when people are upset at their economic situation and see joining together as a way to improve themselves and the larger economy. The implosion of Wall Street, the ensuing Great Recession and sluggish job recovery have brought the weaknesses of the US economy to the fore and produced widespread dissatisfaction with the US brand of capitalism. It is difficult to imagine the country successfully addressing the issues relating to labor – inequality; stagnant real wages for the bulk of the work force; poverty level earnings and benefits for low paid workers, continued high rates of joblessness – without a strong labor movement. But it is also difficult to imagine a union movement wedded to collective bargaining taking the lead in rebuilding a strong labor presence in the economy in a world where collective bargaining is off the map for most workers. At the risk of having some future scholar cite my shortsightedness of where society may be heading, as I have cited Barnett's 1932 prediction, I see reason to believe that the diverse forms of social experimentation described here will give labor a more potent influence on society than it has today.

Table 1: Eleven Innovative Non-collective Bargaining Labor Organizations

Institution (beginning date; Numbers involved), dues	Organization	Problem Addressed	Method of influencing Outcomes
Society-Economy Based			
1 Occupy movement (2011, thousands)	Diverse, many college grads	Inequality; finance issues; varies by region	Publicity; demonstrations
2 Change.org internet petition site (2007, thousands of petition; 123 million signatures, 20 million users) ⁵⁸	For profit business	User determined	Publicity via petitions
3 Working America (2003, 3 million)	AFL-CIO community affiliate	Local issues; electoral information; links to Unionplus benefits	Ballot box
Occupation/Industry Based			
4 Worker Centers (Partner with AFL-CIO, 2006 139 centers servicing <500 members but service more people),	NGO, religious, foundations, fund-raising, dues	Workplace issues, accessing benefits, immigrant rights	Help with “grievances” expose bad practices, advocacy, targeting employers
5 National Domestic Workers Alliance (2007, 10,000 persons in 35 local, membership-based organizations)	NGO	Pay and work conditions of domestic workers	Publicity. Extension of labor laws to domestic workers; affiliated work centers help workers with problems
6 New York Taxi Workers Alliance (1998, 15,000; \$100 year dues)	Union, first non-CB member of NYC Central Labor Council	Pay and benefits in Taxi industry	Helping members with workplace problems; legal and political advocacy for drivers; discounted benefits.
7 Freelancersunion (2003 created from Working Today, 170,000, no dues) ⁵⁹	NGO, foundation support	Worker health insurance; wage arrears problems	Provide health insurance benefits; information
Employer-based			
8 Alliance@IBM; (1999, several hundred members; 5000 subscribers ⁶⁰ \$10 month dues 9 Washtech.org (1998, \$10-\$11 month dues)	Communication Workers Locals	Changes in employment practices and benefits	Internet information/publicity; Petitions
10 OUR Walmart (2010, based on	NGO, with	Improve pay and	Publicity; demonstrations;

⁵⁸ <http://www.change.org/> and <http://www.change.org/about>, accessed December 12, 2012

⁵⁹ <http://www.freelancersunion.org/about/history.html>. For Working Today see Hersch (2004)

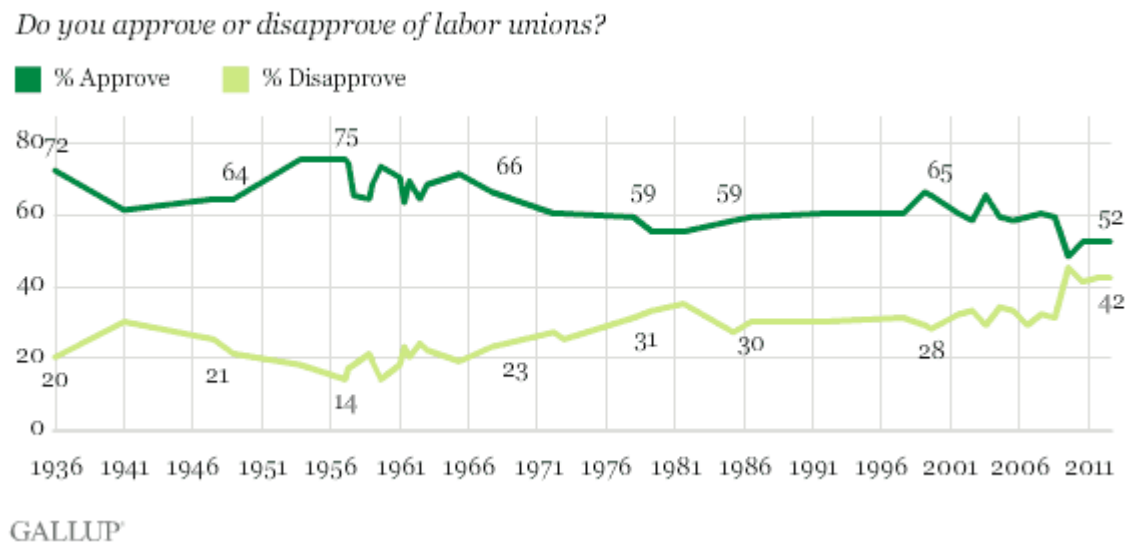
⁶⁰ Greenhouse (2011a)

earlier UFCW campaigns “several thousand”, \$5 month dues) ⁶¹	UFCW support	conditions in big profitable firm where many workers on public benefits	
11 Public Sector Unions in Non-CB states (680,000 in 2011; 14.5% density) ⁶²	Unions	Wages, benefits, work conditions	Politics, lobbying, meet and confer agreements

⁶¹ Greenhouse (2011a)

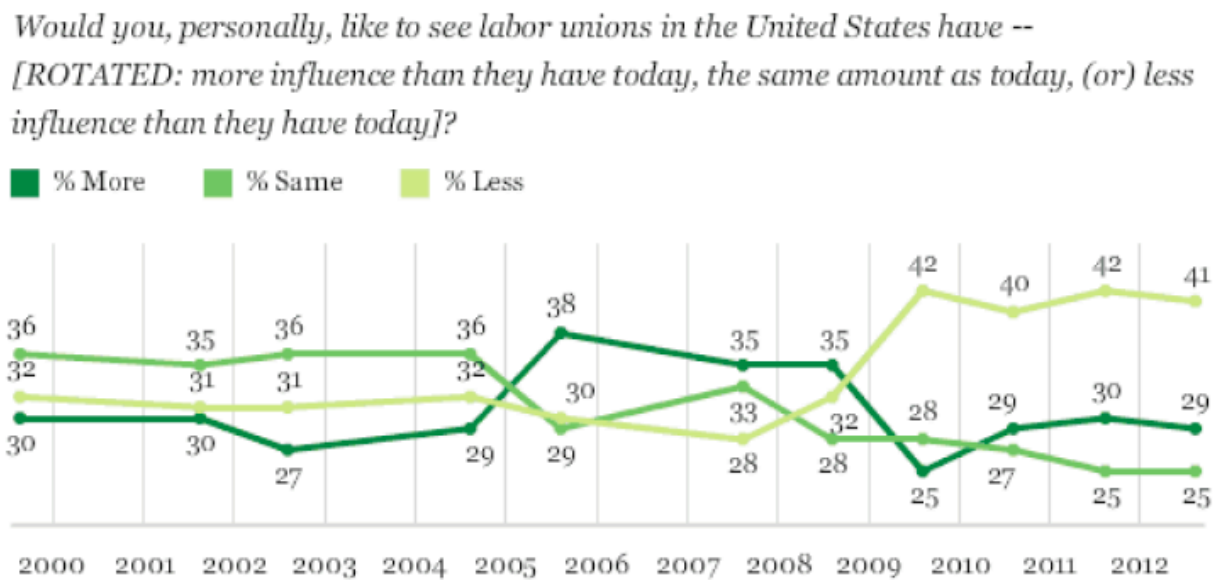
⁶² Freeman and Han (2013)

Figure 1:



<http://www.gallup.com/poll/157025/labor-union-approval-steady.aspx>

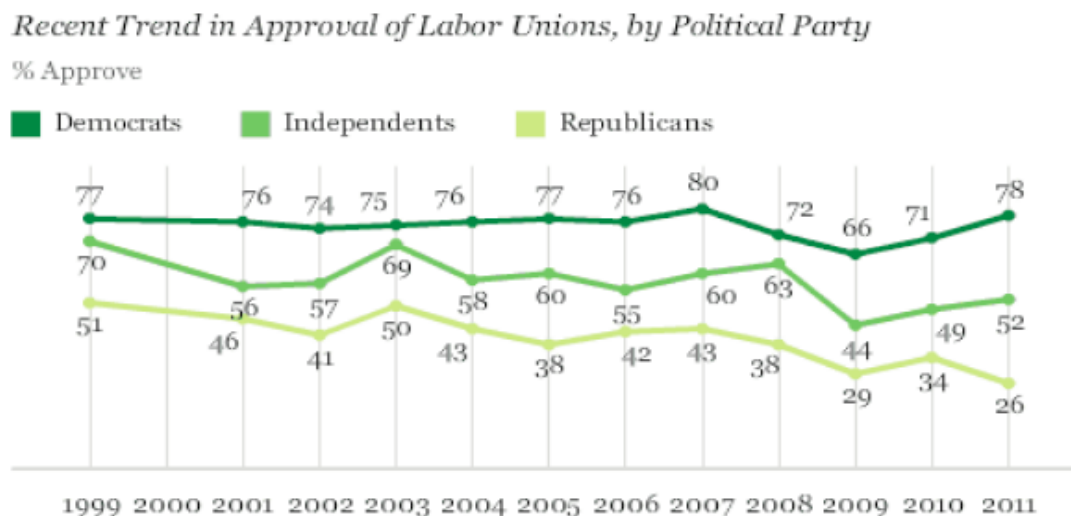
Figure 2:



Source: <http://www.gallup.com/poll/157025/labor-union-approval-steady.aspx>

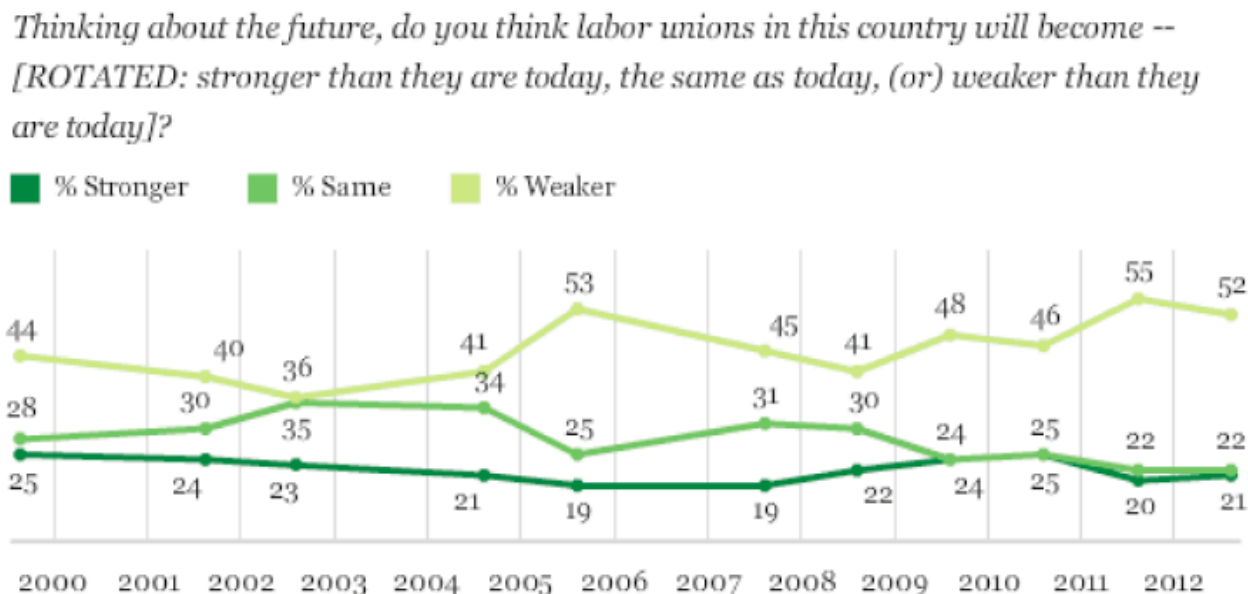
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Figure 3



Source: <http://www.gallup.com/poll/149279/approval-labor-unions-holds-near-low.aspx>
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Figure 4



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